

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TQP DEVELOPMENT, LLC,

Plaintiff,

v.

1-800-FLOWERS.COM, INC., et al.,

Defendants.

NO. 2:11-CV-248-JRG

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Newegg respectfully submits the Supreme Court decision in *Limelight Networks, Inc. v. Akamai Technologies, Inc., et al.* (Slip Opinion attached as Exhibit A), which issued on June 2, 2014, as supplemental authority pertinent to its Rule 50(b) Motion for Judgment as a Matter of Law (Dkt. No. 436) and its Rule 59 Motion for a New Trial (Dkt. No. 437).

The decision is relevant because it rejected the rule of *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 692 F.3d 1301, 1305-07, 1318 (2012) (*en banc*) that a party can be liable for active inducement of infringement of a method claim under 35 U.S.C. § 271(b) when that party is not responsible for the performance of the entire method such that it would be a direct infringer under 35 U.S.C. § 271(a). *Id.* In *Limelight*, the Supreme Court definitively held that a party cannot be liable for active inducement unless a single entity has committed an act of direct infringement. Slip Op. at 4-7. In other words, in a divided infringement scenario, liability for active inducement cannot exist where a party does not actually perform every step of an asserted claim and does not direct or control others to perform the remaining steps. *Id.*

Dated: June 4, 2014

Respectfully submitted,

By: /s/ Anthony W. Brooks

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CERTIFICATE OF SERVICE

This is to certify that on June 4, 2014, a true and correct copy of the foregoing document was served on all counsel of record via the Court's ECF system.

/s/ Anthony W. Brooks
Attorney for Newegg Inc.